

125 FERC ¶ 61,112
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Columbia Gas Transmission Corporation

Docket No. CP07-367-003

ORDER REJECTING TARIFF SHEET

(Issued October 29, 2008)

1. On September 29, 2008, Columbia Gas Transmission Corporation (Columbia) filed Eighty-Ninth Revised Sheet No. 25 to its FERC Gas Tariff, Second Revised Vol. No.1, to place into effect interim rates for service to be provided under its Rate Schedule FT on a portion of its Eastern Market Expansion Project (EME Project) facilities it has been granted approval to place into service. Columbia's proposal was protested. As discussed below, the proposed tariff sheet is rejected.

Background and Details of the Instant Filing

2. In an order issued on January 14, 2008,¹ Columbia was granted authority to abandon, and a certificate of public convenience and necessity to construct, and operate certain natural gas storage, compression, and pipeline facilities in Ohio, West Virginia, and Virginia, in order to provide storage and storage related transportation services for its EME Project customers. Columbia was also granted authority to accelerate certain replacement and reliability work at certain compressor stations in connection with the EME Project. The in-service date for these facilities was expected to be April 1, 2009. The Commission approved initial incremental demand rates for the project² and directed Columbia to file actual tariff sheets identical to the pro forma sheets in its application within 30 to 60 days prior to commencing service on the project facilities. Because

¹ *Columbia Gas Transmission Corporation*, 122 FERC ¶ 61,021 (2008) (January 14 Order).

² The Commission also approved Columbia's proposal to charge expansion shippers its existing Rate Schedule FSS and SST commodity rates for service on the facilities.

Columbia had entered into precedent negotiated rate agreements with four customers³ (EME Customer Group) reflecting a cost-sharing mechanism for 100 percent of the firm capacity on the facilities for services under its no-notice Rate Schedule FSS (Firm Storage Service) and SST (Storage Service Transportation), Columbia also was directed to file the service agreements with the customers within 30 to 60 days prior to commencing service on the project facilities.

3. On September 17, 2008, Columbia filed a request with the Commission to place part of the EME Project facilities in service. Among the facilities Columbia sought to place in service was Line VB-Loop A, a 7.24 mile section of 26-inch pipeline loop located in Warren, Clarke and Fauquier Counties, Virginia. Its request was granted on October 15, 2008, by unreported letter order in Docket No. CP07-367-000.

4. In the instant filing, Columbia states that the EME Project facilities Columbia sought to place in service will make available an additional firm transportation capacity of 12,000 dekatherms per day (Dth/day) as early as November 1, 2008, which is well in advance of Columbia's requested April 1, 2009 in-service date for the EME Project. Columbia requests approval to make this 12,000 Dth/day available to shippers under an Interim Rate Schedule FTS (Firm Storage Service) service, priced at the incremental EME Project SST (Storage Service Transportation) Demand rate approved in the January 14 Order that has been converted to a comparable Firm Transportation Service rate. Columbia asserts that this proposal is consistent with Commission policy requiring pipelines to offer all available capacity for sale to parties willing to pay the maximum rate. Columbia states that this interim transportation capacity will only be available for the five-month period ending April 1, 2009, when the contracts for the EME Customer Group commence. Columbia further states that it has initially offered the incremental 12,000 Dth/day of transportation capacity to the EME Customer Group, subject to firm availability at each designated delivery point in their agreements, and that any capacity not subscribed by the EME Customer Group will be posted on Columbia's electronic bulletin board in accordance with its FERC Gas Tariff.

5. Columbia asserts that the rates approved in the January 14 Order were under Rate Schedules FSS and SST. Columbia states that SST is one of its no-notice transportation services, but that the EME Project's storage facilities necessary to offer no-notice transportation service are not yet complete. Because Line VB-Loop A will be placed in service early, firm transportation capacity associated with the EME Project's facilities will be available, and Columbia proposes to offer this additional capacity at an Interim

³ The four customers are: Washington Gas Light Company; Columbia Gas of Virginia, Inc.; City of Charlottesville, Virginia; and the Easton Utilities Commission.

FTS Recourse Demand Rate derived from the Commission-approved incremental Rate Schedule SST Demand rate for the EME Project. Columbia has attached a workpaper which sets forth the derivation of the Interim FTS Recourse Rate from the Commission approved Rate Schedule SST Rate for the EME Project. Columbia asserts that the use of the incremental rates, rather than Columbia's system-wide FTS rates is appropriate in order to reflect the costs of the new transmission facilities through which this firm capacity is being made available.

6. As set forth on the workpaper included with the instant filing, Columbia has calculated its interim FTS reservation charge of \$14.748 based on a cost of service of \$17,175,216 and billing determinants of 1,164,600. Proposed Eighty-Ninth Revised Sheet No. 25 states that "the rates for service under Rate Schedule FTS that is provided using interim capacity made available by the Eastern Market Expansion facilities will include an incremental FTS demand charge of \$9.112/Dth" which results in a reservation charge of \$14.748, "and a Total Effective Rate of \$15.081."

7. Columbia states that as additional EME transmission facilities are completed, additional firm incremental transportation capacity will become available prior to April 1, 2009. Columbia further states that it will request Commission authority to place these additional facilities in service in accordance with the January 14 Order, and that it will offer this additional transportation capacity at the proposed incremental FTS rate.

Notice, Interventions and Protests

8. Public notice of Columbia's filing was issued on October 2, 2008, with interventions and protests due by October 14, 2008. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2008)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Washington Gas Light Company (Washington Gas) filed a protest, to which Columbia filed an answer.⁴ The details of Washington Gas' protest and Columbia's answer are set forth below.

9. Washington Gas states that, in the September 19, 2008 filing, Columbia seeks permission to modify its original certificate in two ways: first, instead of all facilities

⁴ Although answers to protests are not permitted by Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), the Commission finds good cause to waive the rule and to permit Columbia's answer in the instant proceeding as it provided information that may aid in the disposition of the issues raised by the filing.

being available on April 1, 2009, as originally proposed, Columbia now informs the Commission that certain facilities will be placed in service earlier, and, second, rather than an interim transportation service at the originally proposed Rate Schedule SST rate, Columbia proposes newly designed rates for the interim services. Washington Gas states that Columbia did not submit an updated estimate of the EME Project costs or the actual cost of Line VB-Loop; nor did Columbia seek to develop a unit appropriate to the particular facilities that Columbia will place into service before April 1, 2009.

Washington Gas states that it protests Columbia's filing, but would not oppose Columbia's proposal to use the EME Project facilities if two conditions are imposed: (1) that the recourse rates for such service fairly reflect the cost of the services and (2) that the revenues from the interim services are credited against the costs of construction for the benefit of the long-term EME Project subscribers.

10. Washington Gas asserts that Columbia has developed its recourse rates for the proposed interim service by using as the numerator the estimated costs of the incrementally priced portion of the facilities from its May 3, 2007 certificate application, and by dividing these costs by a denominator equal to imputed Rate Schedule FTS billing determinants. Washington Gas contends that both the numerator and denominator in this unit rate calculation are flawed and must be adjusted before the interim transportation service rates properly reflect costs.

11. Washington Gas asserts that the costs used to develop the unit rates, the numerator in the unit rate calculation, should reflect the actual costs of the facilities that Columbia is planning to use to render the proposed interim transportation services. The interim service that Columbia proposes to render beginning on November 1, 2008, will use only the Line VB-Loop A facilities, which are already completed and ready for service. Washington Gas states that the costs of those facilities and the increase in system capabilities that result from the construction (12,000 Dth/day) are already known with great certainty, so the interim service rate should be developed using the costs and maximum daily capability of only those facilities that will actually support the interim services. Washington Gas further asserts that the denominator of the unit rate calculation should only reflect the billing units associated with the maximum daily quantities that will be made available through these facilities, or 12,000 Dth/day.

12. Washington Gas asserts that the Commission should require Columbia to update its cost estimate and to reflect actual costs where available. Washington Gas notes that the costs reflected in the September 29 filing are nearly a-year-and-a-half old. In the January 14 Order, the Commission required that Columbia update its cost estimate for all of the EME Project facilities once those facilities are placed into service. In order to best reflect costs, any rate should reflect the most up-to-date cost estimate and actual cost data available.

13. Washington Gas protests that the Commission should not allow Columbia to change the rate design principles underlying the denominator of its unit rate calculation as part of an interim transportation service proposal. Washington Gas asserts that the billing units used to design the original Rate Schedule SST incremental recourse rates mirrored the seasonal contractual rights available to Rate Schedule SST shippers. Specifically, Washington Gas notes that the EME Shippers are to be billed corresponding to their entitlements under Rate Schedule SST for 50 percent of their MDQ during the summer months and 100 percent of their MDQ during the winter months. Washington Gas asserts that the proposed interim transportation service is to be offered only during the winter season and cease as of April 1, 2009.

14. Washington Gas urges the Commission to reject Columbia's argument that because the interim service is not a no-notice service, it is less valuable and should be offered at a lower rate. Washington Gas contends that recourse rates should be based upon costs, not value. Washington Gas further contends that no notice customers pay a premium for their service not because of the design of the transportation rate, but because no-notice service customers are obligated to maintain and pay for a combination of storage and transportation services. Washington Gas concludes that the Commission should condition Columbia's proposed interim service proposal by requiring that any interim services be rendered using a recourse rate consistent with the SST rate design originally proposed in this proceeding and reflecting that the actual costs and associated capacity of the facilities actually placed into service early be used to develop the interim transportation service rates.

15. Washington Gas asserts that revenues from the interim transportation services should be credited against the costs of construction for the benefit of the long-term EME Project subscribers. Washington Gas notes that under Columbia's proposal, its shareholders will capture the benefit of all of the revenues resulting from the early installation of EME Project facilities, and Columbia does not propose to credit any of these revenues to offset construction costs or return any of these revenues to the EME Project shippers. Washington Gas contends that this is unfair, inequitable and inconsistent with Commission precedent. Washington Gas asserts that the EME Project was made possible by EME shippers which have given their financial support to the project by entering into long-term precedent agreements with Columbia for all of the long-term capacity that Columbia has constructed, and by agreeing to pay Columbia incremental rates. Washington Gas asserts that Columbia has taken only a small risk in sponsoring this project and it will be fully compensated for that risk when it places the full project into service on April 1, 2009, and begins charging the EME shippers reservation charges that include a rate of return component. Washington Gas contends that Commission precedent requires that when incidental service revenues are generated

by an incrementally priced project, then the project shippers are entitled to receive credits to the cost of service or revenue credits in recognition of their contribution.

16. Washington Gas requests that the Commission require Columbia to submit a revised estimate of total EME Project costs in at least the same detail that it used in its original May 3, 2007, certificate application. Washington Gas asserts that the phasing of facility expansions requires changes in accounting assumptions compared to those that Columbia used in its original project cost estimates. Specifically, consistent with the Uniform System of Accounts, once facilities are placed into service they cease to accrue AFUDC. Therefore, Washington Gas concludes that the change in the EME Project's construction schedule will cause a change in the overall cost of the project to EME shippers by reducing the amount of AFUDC that will be accruing to them through the in service date of April 1, 2009, for the entire project. To reflect this change -- and any other changes in estimated costs that have occurred since Columbia filed its original certificate application in this proceeding -- the Commission should direct Columbia to submit a revised EME Project cost estimate that shows in detail the accounting treatment that Columbia will use to reflect the early in-service date of a portion of the EME Project facilities.

17. In its answer, Columbia asserts that its proposal to base the rates for the interim capacity on the Commission-approved EME rates is just and reasonable, and that Washington Gas has failed to demonstrate otherwise. Columbia also asserts that Washington Gas' argument that the rates for the interim capacity should be based on the actual costs of the Loop A facilities is similarly without merit. Columbia contends that its proposed rate design for the interim capacity is a just and reasonable means to establish the interim winter-only Rate Schedule FTS rate because all the underlying rate components have already been reviewed and approved by the Commission. With regard to Washington Gas' assertion that the actual costs of the Loop A facilities are already known with great certainty, Columbia asserts this is incorrect. Columbia states that it takes several months for contractors to bill Columbia for their services, and even more time for Columbia to gather and account for all of the costs of the looped facilities. Columbia contends it will not be able to determine the actual costs of the Loop A facilities until well after service on the facilities commences. Accordingly, Columbia concludes that establishing an interim rate based on the estimated costs of the EME facilities is appropriate.

18. Columbia asserts that, as it explained in its filing, additional transmission capacity is anticipated to become available as the other loop lines are placed into service later in the upcoming winter season. Columbia argues that it would be unnecessarily cumbersome to require Columbia to continually update the incremental rates as additional EME facilities are placed into service, particularly given that the EME rates have already been approved by the Commission as just and reasonable.

19. In response to Washington Gas' argument that Columbia should design the demand rate for the interim capacity using the same rate design as Rate Schedule SST, Columbia asserts that Rate Schedule SST requires the primary receipt point to be Columbia's storage, and the EME Project's storage facilities, which are necessary to offer no-notice transportation service, are not yet complete. Therefore, storage service will not be an option for this interim capacity. Columbia asserts that Washington Gas has not provided any justification for its proposal to design an Interim Rate Schedule SST rate, as opposed to Columbia's proposed FTS rate, without having storage services. Columbia further asserts that Washington Gas' proposed Rate Schedule SST service would materially alter the nature of this service as compared to the nature of Columbia's current Rate Schedule SST service. Moreover, Columbia contends that it would be erroneous to design the Rate Schedule FTS rate based upon the Rate Schedule SST rate design. Columbia asserts that Rate Schedule SST presumes a 50 percent reduction in MDQ during the summer, and as Washington Gas correctly points out, there will not be an MDQ reduction for this service during the upcoming winter. Therefore, Columbia concludes that offering a Rate Schedule FTS service based upon a consistent MDQ level is appropriate.

20. In response to Washington Gas' argument that all revenues Columbia receives from the sale of the interim capacity should be credited against the cost of the EME Project facilities, Columbia asserts that this position is contrary to Commission policy and should be rejected. Columbia contends it has the right to earn a return and to recover operating expenses from the facilities it uses to provide service to shippers. Columbia argues that it is at risk for recovering the cost of service for these interim facilities for the upcoming winter season because the EME Customer Group's contracts do not commence until April 1, 2009. Because the interim capacity made available by these facilities is presently unsold for the upcoming winter season, Columbia is at risk for revenue recovery of these five winter months, not the EME Customer Group. Columbia concludes that the EME Customer Group should not be credited any of these revenues.

21. Columbia also contends that the precedent cited by Washington Gas is completely inapposite. It asserts that in both *Transcontinental Gas Pipe Line Corporation*⁵ and *Gulf South Pipeline Company, LP and Destin Pipeline Company, L.L.C.*⁶ the Commission addressed the crediting of interruptible revenues, which is consistent with Commission policy regarding new interruptible services that requires the pipeline to either credit 100 percent of the interruptible revenues, net of variable costs, to firm and interruptible

⁵ 124 FERC ¶ 61,160 (2008).

⁶ 122 FERC ¶ 61,162 (2008).

customers or to allocate costs and volumes to these services. Columbia asserts that there is no such policy requiring pipelines to credit revenues from firm transportation service. Such a policy would be tantamount to requiring Columbia to offer service for free, which is inconsistent with the fundamental principle that a natural gas pipeline is entitled to an opportunity to earn a reasonable return on its investment. Accordingly, Columbia concludes that Washington Gas' argument should be rejected.

22. Columbia states that it will file revised rates based on actual costs when all costs for the EME Project facilities are known. In response to Washington Gas' argument that Columbia should be required to file revised cost estimates for the EME Project that include, where available, actual costs, Columbia states that both the precedent agreements and the service agreements for the EME Project require Columbia to file, after the in-service date of the EME Project, revised rates reflecting the actual costs of the EME Project facilities. Columbia states that Washington Gas, as well as any other shipper, can address any cost issues when Columbia makes that filing. Moreover, Columbia asserts it will comply with the cost reporting requirements of Section 157.20(c)(3) of the Commission's regulations once all EME Project facilities authorized by the Commission are built and placed into service. Columbia concludes that there is no reason for Columbia to make another filing before all of the actual costs associated with the EME Project have been determined.

Discussion

23. The Commission will reject the proposed tariff sheet. The Commission finds that this proposal should have been submitted as part of an application to amend Columbia's certificate granted by the January 14 Order. As noted earlier herein, the January 14 Order approved initial incremental Rate Schedule FSS and SST rates for the EME Project and conditioned issuance of the certificate on Columbia filing actual tariff sheets identical to the *pro forma* sheets in its application within 30 to 60 days prior to commencing service on the project facilities. In addition, because Columbia entered into precedent negotiated rate agreements with four customers (EME Customer Group) reflecting a cost-sharing mechanism for 100 percent of the firm capacity on the facilities for services under its Rate Schedules FSS and SST, the issuance of the certificate was conditioned on Columbia filing the service agreements with those customers within 30 to 60 days prior to commencing service on the project facilities. Columbia did not comply with these conditions and, instead, filed under NGA section 4 to implement the instant tariff sheet reflecting the proposed Interim Rate Schedule FTS rate for Rate Schedule FTS service it proposes to be provided on the subject facilities. Columbia has proposed to use the facilities for service other than that for which the certificate was issued and at an initial rate different than that approved.

24. While we encourage pipelines to place facilities in service at the earliest time to permit the pipeline to provide enhanced service and commence recovery of costs of projects, Columbia may not change the approved initial rates and services in a section 4 filing prior to commencement of service under the certificate and before the actual tariff sheets identical to the *pro forma* tariff sheets approved by the January 14 Order have been filed and have been permitted to become effective.⁷ Columbia must file to amend the certificate issued in Docket No. CP07-367-000 if it wishes to implement service on the certificated facilities under a rate schedule and at rates different than approved in that docket in the Commission's January 14 Order. Further, Columbia must file to amend the certificate issued in Docket No. CP07-367-000 to revise the initial rates authorized by the January 14 Order to reflect the rate consequences of placing any EME Project facilities in service prior to April 1, 2009, including recovery of costs, termination of the Allowance for Funds Used During Construction (AFUDC), and the effects of commencing depreciation of the facilities placed in service. Columbia also is reminded that it must comply with 18 C.F.R. §§ 154.309 and 157.20(c)(3) (2008) with respect to any facilities placed in service prior to the projected April 1, 2009 in-service date of the EME Project.

The Commission orders:

(A) Eighty-Ninth Revised Sheet No. 25 is rejected.

(B) Columbia must file to amend the certificate issued in Docket No. CP07-367-000 if it wishes to implement service on the certificated facilities under a rate schedule and at rates different than approved in that docket in the Commission's January 14 Order.

⁷ The Commission has approved a certificate application proposal to begin service on segments of expansion project facilities at the approved initial rate as each segment is completed on the basis that all lines were to be placed in service within the same general time frame. *See Colorado Interstate Gas Co.*, 122 FERC ¶ 61,256, P 82 at note 46 (2008).

(C) Columbia must file to amend the certificate issued in Docket No. CP07-367-000 to revise the initial rates authorized by the January 14 Order to reflect the rate consequences of placing any EME Project facilities in service prior to April 1, 2009.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.